

1 by the video services division?

2 Q I'm sorry. Let me orient you on
3 that. June 18 was the date of the video
4 services division letter. July 30, I believe,
5 is the date of your letter, and that's -- July
6 30, end of July '93, was selected as a stop
7 date because that was the date of your letter
8 going out.

9 A And your question was, did I have
10 contact?

11 Q Any oral communications with anyone
12 acting on behalf of RBC during that period of
13 time where the communications concerned any RBC
14 application which was pending before the bureau
15 at the time of the communication?

16 A Yes, I did.

17 Q Do you know how many communications
18 you had?

19 A I had -- I assume that the -- the
20 contact by phone initiated by Toni Cook was
21 somehow related to that. I don't know if she
22 represented them or -- I don't think so at the

1 time, but that was one.

2 I had a telephone call from a Margot
3 Polivy with respect to those applications.
4 That was the second, and then there was
5 subsequently a meeting in my office with Margot
6 and some members of my staff.

7 Q Do you recall the date of the
8 meeting?

9 A Probably late June or early July. I
10 don't remember.

11 Q Okay. And the call from Miss Polivy
12 preceded that meeting; is that correct?

13 A Yes, it did.

14 Q And the call from Miss Cook preceded
15 both the call from Miss Polivy and the meeting?

16 A Yes.

17 Q Now, with respect to the Toni Cook
18 conversation, was that by telephone, or was it
19 a meeting?

20 A That was a phone call from Toni Cook
21 to me.

22 Q At any time during the conversation

1 with Miss Cook, did she say anything to you
2 about the Commission's ex parte rules?

3 A No, she did not.

4 Q At any time during the conversation
5 with Miss Cook, did she say anything to you
6 about the applicability of the ex parte rules
7 to the conversation you were having?

8 A No, she did not.

9 Q At any time during the conversation
10 with Miss Cook --

11 (Whereupon, Mr. Bruce Eisen
12 entered the room.)

13 BY MR. COLE:

14 Q -- did she say anything to you which
15 you understood to relate either to the
16 Commission's ex parte rules or to the
17 applicability of those rules to the
18 conversation you were having?

19 A No, she did not.

20 BY MR. COLE:

21 Q At any time during your conversation
22 with Miss Cook, did you say anything to her

1 about the Commission's ex parte rules?

2 A No, I did not.

3 Q Okay. At any time during your
4 conversation with Miss Cook, did you say
5 anything to her about the applicability of the
6 ex parte rules to your conversation?

7 A No. The subject did not come up
8 during my conversation.

9 Q All right.

10 Now, let's go to the Margot Polivy
11 telephone call. That was a telephone call; is
12 that correct?

13 A Yes.

14 Q And did you receive that, or did you
15 place that call?

16 A No, I received the call.

17 Q At any time during that call, did
18 Miss Polivy say anything to you about the
19 Commission's ex parte rule?

20 A I don't recall any conversation with
21 respect to that.

22 Q At any time during the call with Miss

1 Polivy, did she say anything to you about the
2 applicability of the ex parte rules to the
3 conversation you were having?

4 A No. I don't recall any discussion of
5 that with respect to the ex parte rules.

6 Q At any time during your conversation
7 with Miss Polivy, the telephone conversation,
8 did she say anything which you understood to
9 relate either to the Commission's ex parte
10 rules or to the applicability of those rules to
11 the communication which was taking place?

12 A No. I don't recall any conversation
13 with respect to that.

14 Q At any time during your conversation
15 with Miss Polivy, did you say anything to her
16 about the Commission's ex parte rules?

17 A No.

18 Q And at any time during your
19 conversation with Miss Polivy, did you say
20 anything to her about the applicability of the
21 ex parte rules to the conversation you were
22 having?

1 A No, I did not.

2 Q Okay. Now, am I correct that the
3 only other communication you recall is the end
4 of June, early July meeting?

5 A Yes. There was a meeting in my
6 office.

7 Q Do you recall who attended that
8 meeting on behalf of RBC?

9 A Margot was there, and there was
10 somebody with her, who I subsequently found out
11 was a principal, I think, of the -- of Rainbow.

12 Q Would that have been Joseph Rey? Do
13 you recall?

14 A I wouldn't remember his name.

15 Q At any time during the meeting -- and
16 I think counsel will all stipulate that that
17 meeting occurred on July 1, 1993, from as best
18 as we can reconstruct, and I'll refer to it as
19 the July 1 meeting, just for convenience's
20 sake.

21 At any time during that meeting, did
22 Miss Polivy or her client say anything about

1 the Commission's ex parte rules?

2 A No.

3 Q At any time during the July 1
4 meeting, did Miss Polivy or her client say
5 anything about the applicability of the ex
6 parte rules to the meeting that was being held?

7 A No.

8 Q At any time during the July 1
9 meeting, did Miss Polivy or her client say
10 anything which you understood to relate in any
11 way to the Commission's ex parte rules or to
12 the applicability of the ex parte rules to the
13 meeting that you were having?

14 A No.

15 Q At any time during the July 1
16 meeting, did you say anything to Miss Polivy or
17 to her client concerning the Commission's ex
18 parte rules?

19 A No.

20 Q And at any time during the July 1
21 meeting, did you say anything to Miss Polivy or
22 her client about the applicability of the ex

1 parte rules to the meeting that was being held?

2 A No.

3 Q Would it be accurate to state, Mr.
4 Stewart, that at no time in any oral
5 communicat2on between you and anyone acting on
6 behalf of RBC did either you or the person or
7 persons with whom you were communicating say
8 anything about the ex parte rules?

9 A To the best of my recollection, the
10 answer is no.

11 MR. DZIEDZIC: Perhaps you could --

12 BY MR. COLE:

13 Q Let me repeat the question.

14 The question was, is it accurate to
15 state that at no time in any oral communication
16 did the topic of ex parte come up?

17 A That's correct.

18 Q Is it also accurate to state that at
19 no time in any oral communication between you
20 and anyone acting on behalf of RBC did either
21 you or the person or persons with whom you were
22 communicating, say anything about the

1 applicability of the ex parte rules to the
2 communication that was taking place?

3 A That's correct.

4 Q And finally, is it also accurate to
5 state that at no time in any oral communication
6 between you and anyone acting on behalf of RBC,
7 did the person or persons with whom you were
8 communicating say anything which you understood
9 to relate in any way to the ex parte rules or
10 to the applicability of the ex parte rules to
11 the communication which was taking place?

12 A That's correct.

13 MR. COLE: Fine.

14 I have no further questions.

15 EXAMINATION BY COUNSEL FOR RAINBOW

16 BROADCASTING, LIMITED

17 BY MS. POLIVY:

18 Q Mr. Stewart, I'm Margot Polivy.

19 A Hi, Margot.

20 Q Nice to see you. I only have a few
21 questions.

22 Other than the July 1 meeting

1 regarding the Rainbow application and the
2 telephone call that you referred to --

3 A Which call? The Toni Cook call or --

4 Q No, the call from me.

5 A Okay.

6 Q Do you recall any other discussion
7 that you had with me or with any other Rainbow
8 principal regarding the Rainbow applications?

9 A No.

10 Q Other than the call that you referred
11 to naming Toni Cook, do you recall any other
12 discussions with her regarding the Rainbow
13 application?

14 A No.

15 Q Setting the meeting aside, in any
16 telephone call that you had with me or any
17 representative of Rainbow, did you express at
18 any time a concern that there was an ex parte
19 violation?

20 A Did I express it to anybody?

21 Q No, to me.

22 A No.

1 Q Or to any representative of Rainbow.

2 A The subject did not come up in any
3 conversation that I had with you or any
4 representative of Rainbow.

5 Q Would the same be true with respect
6 to any conversations you had with Toni Cook?

7 A That's correct, yes.

8 Q And would the same be true regarding
9 the meeting as to Rainbow or its counsel?
10 Would you like me --

11 A That's correct. We did not discuss
12 whether or not there would be an ex parte
13 violation.

14 Q Then or subsequently?

15 A There was no subsequent discussion
16 except the meeting in my office, and it did not
17 come up there.

18 Q At the time of the meeting in your
19 office, were you aware that the Rainbow
20 applications were contested?

21 MR. DZIEDZIC: Objection. It goes to
22 his state of mind. It's not a relevant

1 question.

2 MS. POLIVY: It's not a state of
3 mind. I'm asking if he knew whether or not
4 there had been objections filed.

5 MR. DZIEDZIC: How can you ask him
6 what he knew and not be asking about his state
7 of mind? The issue here --

8 MS. POLIVY: What he knows is a fact.
9 State of mind is what he thought.

10 MR. DZIEDZIC: What he knows is a
11 fact, but it's not relevant.

12 MR. BLOCK: Yes. I think it's not
13 relevant either.

14 MS. POLIVY: That's a most peculiar
15 rendition. If it is relevant to ask if he
16 asked about ex parte or he discussed ex parte,
17 to say that it is not relevant to ask whether
18 he was aware that they were contested
19 applications is bizarre.

20 Are you directing him not to answer?

21 MR. DZIEDZIC: It's not a relevant
22 question.

1 MS. POLIVY: You put in your
2 objection.

3 MR. DZIEDZIC: I said, yes.

4 MS. POLIVY: Yes, what?

5 MR. DZIEDZIC: I'm directing him not
6 to answer.

7 MS. POLIVY: Well, I think that we
8 ought to call Mr. Chachkin up.

9 MR. BLOCK: Let me read into the
10 record the first sentence of paragraph 11.

11 MR. COLE: Of what?

12 MR. BLOCK: Of the Commission's order
13 setting up these depositions. It's the May 13
14 -- released May 13, 1996, the order of the
15 Commission. This is paragraph 11.

16 "As the ALJ director, the scope of
17 such depositions should be strictly limited to
18 the substance of any communications between the
19 bureau staff and Rainbow or its representatives
20 concerning the applicability and Rainbow's
21 understanding of the applicability of the ex
22 parte rules of this proceeding."

1 I believe your question goes to his
2 understanding of the applicability.

3 MS. POLIVY: I'll rephrase.

4 MR. BLOCK: And therefore it's
5 irrelevant.

6 MS. POLIVY: Thank you, Mr. Block.

7 BY MS. POLIVY:

8 Q Mr. Stewart, did you during the
9 meeting or during any of the phone calls that
10 you've described, at any time express to
11 Rainbow or its counsel or to Toni Cook the fact
12 that the Rainbow applications were contested?

13 A Did I express?

14 Q Yes. Did you say anything that would
15 indicate to them that you were aware that the
16 Rainbow applications were contested?

17 MR. DZIEDZIC: Objection to the last
18 part of the question.

19 BY MS. POLIVY:

20 Q Will you answer the question, please?

21 MR. DZIEDZIC: No. I'm directing him
22 not to answer. I think it's an unaskable

1 question.

2 MS. POLIVY: Then why are you playing
3 games?

4 MR. EISEN: Bruce Eisen, representing
5 Rainbow Broadcasting Company.

6 Could we read back the last part of
7 that question, please?

8 MR. DZIEDZIC: The last part that
9 pertained --

10 MR. EISEN: That was objected to.

11 MR. DZIEDZIC: Right.

12 (The reporter read the record as
13 requested.)

14 MR. DZIEDZIC: Could you ask --

15 MS. POLIVY: Now, can you tell me
16 what you object to?

17 MR. EISEN: Yes, what is the
18 objection?

19 MS. POLIVY: What is the objection?

20 MR. DZIEDZIC: I think the question
21 comes too close to going to his state of mind.

22 MS. POLIVY: I don't care whether it

1 comes too close. State the objection.

2 MR. DZIEDZIC: I already stated the
3 objection.

4 MR. EISEN: It's not a question of
5 state of mind -- Mr. Stewart's state of mind.
6 It's a fact that relates possibly to Miss
7 Polivy's state of mind.

8 MR. DZIEDZIC: Could you ask whether
9 the question of the -- how about this?

10 MS. POLIVY: How about the question I
11 asked?

12 MR. MOSKOWITZ: Chuck, it's
13 describing what he expressed. It's describing
14 his communication.

15 MR. DZIEDZIC: He has already
16 testified to that. He has testified --

17 MS. POLIVY: No. He testified there
18 was no discussion of ex parte.

19 MR. DZIEDZIC: Excuse me. Can I
20 finish?

21 MS. POLIVY: No.

22 MR. DZIEDZIC: I can't finish?

1 MS. POLIVY: No, not if you're
2 misstating what he said.

3 MR. EISEN: Let him explain it,
4 please.

5 MS. POLIVY: Now, can you tell me why
6 the question is objectionable?

7 MR. DZIEDZIC: The witness has
8 already testified as to whether or not,
9 pursuant to Mr. Cole's questions, there were
10 any conversations either in telephone
11 communications or the communications at the
12 July 1 meeting.

13 MS. POLIVY: About ex parte?

14 MR. DZIEDZIC: About ex parte.

15 MR. MOSKOWITZ: That's not what she
16 asked.

17 MS. POLIVY: I didn't ask that
18 question.

19 MR. DZIEDZIC: You're asking the same
20 question as to whether or not at that meeting
21 the issue of the contested nature of the
22 proceeding came up? Is that your question?

1 MS. POLIVY: I'm asking --

2 MR. DZIEDZIC: Whether or not it was
3 contested?

4 MS. POLIVY: Read back the question,
5 please.

6 (The reporter read the record as
7 requested)

8 MS. POLIVY: You're drawing --

9 MR. DZIEDZIC: I think it goes beyond
10 the scope of the --

11 MS. POLIVY: Perhaps.

12 MR. DZIEDZIC: Well, let me finish.

13 MS. POLIVY: The witness and counsel
14 would like to discuss it.

15 MR. DZIEDZIC: I think the problem is
16 the use of the term "contested."

17 MS. POLIVY: Well, that is a term
18 that I will insist on.

19 MR. DZIEDZIC: I don't think that's
20 pertinent.

21 MR. BLOCK: Can we go off the record
22 a --

1 MS. POLIVY: No. Just a minute.

2 The Commission has said that Mr.
3 Stewart and all of the other Commission
4 witnesses may be questioned on the substance of
5 any communications between the staff and
6 Rainbow or its representatives concerning the
7 applicability and Rainbow's understanding of
8 the applicability of the ex parte.

9 Now, that goes directly to a material
10 portion of that.

11 MR. DZIEDZIC: What goes to that?
12 What aspect?

13 MS. POLIVY: My question.

14 MR. DZIEDZIC: What aspect of your
15 question?

16 MS. POLIVY: The question itself.

17 Now, if we want to stand here and
18 dance around, we will be here all day, because
19 I will not --

20 MR. DZIEDZIC: Does your --

21 MS. POLIVY: -- concede that you're
22 entitled to tell me that I cannot ask that

1 question.

2 MR. DZIEDZIC: I can't say anything
3 to you about the questions you can ask. I can
4 only advise my client on the questions I think
5 he should answer.

6 MS. POLIVY: Well, are you advising
7 him not to answer?

8 MR. DZIEDZIC: I've objected to the
9 question, and I have so advised him.

10 MR. EISEN: Mr. Dziedzic, could you
11 just read the first sentence? I know you're
12 familiar with it. The first sentence of
13 paragraph 11.

14 MR. DZIEDZIC: Can I ask you a
15 question?

16 MR. EISEN: Please.

17 MR. DZIEDZIC: Is it your
18 understanding that the phrase "contested
19 application" implies that the ex parte rules
20 are implicated?

21 MR. EISEN: It doesn't imply
22 anything.

1 MS. POLIVY: It is a factual
2 question.

3 MR. DZIEDZIC: The fact is to the
4 contested nature of the proceeding?

5 MS. POLIVY: The legal conclusions
6 that may be drawn from that are an entirely
7 different matter. It is a question of fact.

8 MR. BLOCK: Let's go off the record
9 for a second.

10 MR. DZIEDZIC: No.

11 MR. BLOCK: I want a private
12 conversation with --

13 MS. POLIVY: He doesn't want to go
14 off the record.

15 MR. DZIEDZIC: If you want to have a
16 private conversation, that's different.

17 No, between counsel. That is
18 certainly appropriate, I think.

19 MS. POLIVY: You're not representing
20 -- you know, at this point, you don't control
21 the deposition.

22 MR. EISEN: No, he said it's okay.

1 He just wants to have a private conference.

2 MS. POLIVY: Fine. Go off the
3 record.

4 (Discussion off the record)

5 MS. POLIVY: I don't care. Either
6 read it back on the record or off the record.
7 I think by now everyone has totally forgotten
8 what we're talking about.

9 (The reporter read the record as
10 requested)

11 BY MS. POLIVY:

12 Q I'm going to rephrase the question.

13 Mr. Stewart, did you say anything
14 during the meeting to the effect that the
15 Rainbow applications were contested?

16 MR. DZIEDZIC: Note my objection.

17 THE WITNESS: Did I say anything to
18 the effect that the Rainbow applications were
19 contested?

20 MR. DZIEDZIC: And we're talking
21 about the July 1 meeting?

22 BY MS. POLIVY:

1 Q Yes. There was only one meeting.

2 A Not specifically, no. I did
3 indicate, though, that should you file a
4 petition for reconsideration, I would suggest
5 that you serve -- that you put service on that,
6 and I think I have to say that.

7 I mean, because that's true, and I
8 did say that, but I --

9 Q When you say that you put service on
10 there, what --

11 A You serve the -- I forgot what the
12 phrase was that I used, if it was the objector
13 or the contestor or what, but that was at the
14 end of the meeting. And I just made that
15 reference when you indicated you were going to
16 file a petition for reconsideration.

17 Q And did you name the objector? Or
18 any representative of the objector?

19 A I don't remember doing that
20 specifically.

21 Q During that meeting or in the course
22 of the meeting, did Rainbow or its

1 representatives say anything about Press
2 Broadcasting opposing Rainbow's applications?

3 A I don't recall that being done.

4 Q Do you recall how long the meeting
5 lasted?

6 A Oh --

7 Q The July 1 meeting?

8 MR. DZIEDZIC: Objection. Objection.

9 It doesn't go to the substance of the
10 communications relating to ex parte rules.

11 But you can answer.

12 BY MS. POLIVY:

13 Q Answer the question.

14 A You know, I think probably about 15
15 minutes -- it wasn't a very long meeting -- at
16 the most, and I had other people waiting in my
17 outside office for another meeting.

18 (Discussion off the record)

19 BY MS. POLIVY:

20 Q Mr. Stewart, subsequent to the
21 meeting to your knowledge was any notation made
22 of any ex parte contact regarding the meeting?

1 MR. DZIEDZIC: I object, but the
2 witness can answer.

3 THE WITNESS: With respect to ex
4 parte?

5 BY MS. POLIVY:

6 Q It's my understanding the
7 Commission's procedures require if there's an
8 ex parte contact, that a notation -- an oral ex
9 parte contact, a notation be made to the file;
10 is that correct?

11 MR. DZIEDZIC: Objection. I direct
12 him not to answer that.

13 BY MS. POLIVY:

14 Q In any case, then, I'll repeat my
15 last question, my previous question.

16 Are you aware of any ex parte
17 notation that was made concerning the July 1
18 meeting?

19 MR. DZIEDZIC: And I'm going to
20 interrupt and apologize for doing so, but I
21 object to the phrase "subsequent" and the use
22 of the phrase "notation."